An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-358

No. COA21-307

Filed 17 May 2022

North Carolina Industrial Commission, I.C. No. 767919

MARSHA MAAS, Employee, Plaintiff,

v.

WALGREENS, Employer, and SEDGWICK CMS, Third Party Administrator, Defendants.

Appeal by defendants from Opinion and Award entered 5 February 2021 by the North Carolina Industrial Commission. Heard in the Court of Appeals 30 November 2021.

Hedrick Gardner Kincheloe & Garofalo, LLP, by M. Duane Jones and Kari L. Schultz, for defendant-appellants.

Marsha Maas pro se, no brief.

GORE, Judge.

¶ 1 Walgreens and Sedgwick CMS, (collectively, "defendants"), appeal from the Opinion and Award of the Full Commission of the North Carolina Industrial Commission, filed 5 February 2021. Defendants raise one issue on appeal; whether the Full Commission erred in awarding employee-plaintiff Marsha Maas medical treatment to reduce and/or eliminate an opioid dependence. Defendants present two

arguments: (1) the issue of medical treatment to treat an alleged opioid dependence was not properly preserved for review; and (2) there is no competent medical evidence in this matter to establish a causal relationship between plaintiff's work-related injury and treatment for plaintiff's alleged opioid addiction.

¶ 2 Upon review, we reverse the Opinion and Award to the extent that it awards plaintiff medical treatment to treat an opioid dependence.

I. Factual and Procedural Background

¶ 3 While at work on 28 April 2006, employee-plaintiff Marsha Maas was looking down at the contents of her purse when she walked into an open cabinet door, striking her head and left shoulder. On 20 December 2007, defendants Walgreens and Sedgwick CMS filed a Form 60 accepting plaintiff's claim for compensation. A few years later, plaintiff alleged the need for reimbursement for attendant care that her husband and others had provided as well as additional compensation for medically necessary ongoing attendant care. Pursuant to a Consent Order entered into by the parties and approved by the Industrial Commission on 9 January 2012, defendants commenced payment for ongoing attendant care services for four hours per day, seven days per week.

¶ 4 Subsequently, a dispute arose over plaintiff's request for increased compensation for attendant care services. On 13 January 2014, Deputy Commissioner Vilas entered an Opinion and Award after a hearing on the matter.

Deputy Commissioner Vilas specified defendants were to compensate plaintiff's husband for 5 hours of attendant care per week and provide additional attendant care/companion services through a professional service provider for 20 hours per week. Defendants were also to provide up to an additional 16 hours per week of companion/attendant care for plaintiff by a friend or family member other than plaintiff's husband. The parties did not appeal Deputy Commissioner Vilas's Opinion and Award.

¶ 5 Later, another dispute arose over attendant care, which also required a hearing. Deputy Commissioner Hullender initially heard the matter on 30 May 2018 and reconvened on 31 May 2018 and 13 June 2018. On 27 June 2019, Deputy Commissioner Hullender entered an Opinion and Award specifying that plaintiff is not entitled to any further medical compensation, including medical treatment, prescription medications, or attendant care, related to the compensable 28 April 2006 work injury. On 10 July 2019, plaintiff filed notice of appeal to the Full Commission.

¶ 6 This matter was reviewed by the Full Commission on 17 December 2019. On 5 February 2021, the Full Commission entered an Opinion and Award substantially agreeing with Deputy Commissioner Hullender. However, the Full Commission made the following additional award pertinent to this appeal:

> 1. Plaintiff is not entitled to any further medical compensation, including medical treatment, prescription medications, or attendant care, related to the compensable

> 28 April 2006 work injury, save and except as follows: Defendants shall identify a care provider to treat plaintiff's related opioid dependence to gradually eliminate her need for such medications. Should Plaintiff fail to participate in any such program, the Defendants are authorized to cease providing care.

On 8 March 2021, defendants filed notice of appeal to this Court.

II. Discussion

¶ 7 Defendants argue plaintiff failed to preserve this issue for review before the Full Commission as required by Industrial Commission Rule 701. Moreover, they lacked sufficient notice as to the issue of treatment for opioid dependence at any time during litigation. Defendants contend the Full Commission created an issue no party raised and provided a resolution no party asked for. We agree.

¶ 8 Industrial Commission Rule 701 provides, in pertinent part:

> Appellant's Form 44. The appellant shall submit a Form 44 Application for Review stating with particularity all assignments of error and grounds for review, including, where applicable, the pages in the transcript or the record on which the alleged errors shall be recorded. Grounds for review and assignments of error not set forth in the Form 44 Application for Review are deemed abandoned, and argument thereon shall not be heard before the Full Commission.

11 NCAC 23A .0701(d) (2020).

¶ 9 "[T]he portion of Rule 701 requiring appellant to state with particularity the grounds for appeal may not be waived by the Full Commission. Without notice of the grounds for appeal, an appellee has no notice of what will be addressed by the Full

Commission." *Roberts v. Wal-Mart Stores, Inc.*, 173 N.C. App. 740, 744, 619 S.E.2d 907, 910 (2005).

¶ 10 Here, defendants had no notice as to the issue of plaintiff's treatment for opioid dependence. Plaintiff never raised the issue of whether she was entitled to medical treatment to assist her in reducing and/or eliminating her dependance on opioid medications. The parties' pre-trial agreement did not contain a request that the Industrial Commission address this issue. In the 27 June 2019 Opinion and Award, Deputy Commissioner Hullander reiterated the same issues raised during the pre-trial agreement, and no additional issues were presented. Plaintiff raised issues specific to compensation for attendant care services, and defendants disputed ongoing indemnity or medical compensation relating to plaintiff's compensable injury that occurred on 28 April 2006. While defendants did raise the issue of whether some prescriptions were related to plaintiff's compensable work-related injury, treatment for opioid dependence was not raised by either party.

¶ 11 The 27 June Opinion and Award did not address the issue of medical treatment pertaining to opioid medications, nor did it contain any findings of fact or conclusions of law related to the treatment of plaintiff's opioid dependence. In her Form 44, plaintiff did not assign any error to Deputy Commissioner Hullander's failure to award medical treatment to address an opioid dependence. The only argument she raised in her brief to the Full Commission pertaining to opioids was that those

medications should continue to be prescribed and paid for by defendants. "[T]he penalty for non-compliance with the particularity requirement is waiver of the grounds, and, where no grounds are stated, the appeal is abandoned." *Wade v. Carolina Brush Mfg. Co.*, 187 N.C. App. 245, 249, 652 S.E.2d 713, 715 (2007).

III. Conclusion

¶ 12 The full commission erred in reaching the issue of opioid dependence treatment. Plaintiff did not preserve this issue for review in her Form 44, nor did she raise any argument relating to an award for this type of medical treatment. Thus, we reverse the 5 February 2021 Opinion and Award to the extent it awards plaintiff medical treatment for opioid dependence. Considering our resolution of this matter above, it is unnecessary to address defendant's remaining arguments.

REVERSED AND REMANDED.

Chief Judge STROUD and Judge HAMPSON concur.

Report per Rule 30(e).